

June 21, 2013

VIA HAND DELIVERY

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Room TW-A325
Washington, DC 20554

**Re: AMV Gateway, LLC – Request for Review of Decision of the Universal
Service Administrator, WCB Docket Nos. 06-122, 96-45 and 97-21**

Dear Secretary Dortch:

On behalf of AMV Gateway, LLC ("AMV"), please find enclosed AMV's Request for Review of Decision of the Universal Service Administrator, WCB Docket Nos. 06-122, 96-45 and 97-21 ("Appeal").

AMV, by its counsel and pursuant to Sections 0.457 and 0.459 of the Commission's, Rules 47 C.F.R. §§ 0.457, 0.459, respectfully requests confidential treatment of certain information provided in its Appeal because this information is competitively sensitive and its disclosure would have a negative competitive impact on AMV were it made publicly available. Accordingly, AMV is submitting a confidential version of the Appeal marked "CONFIDENTIAL – NOT FOR PUBLIC INSPECTION." AMV provides justification for the confidential treatment of this information in Attachment 1 to this letter. AMV is also submitting a redacted version of this Appeal filed concurrently via ECFS. The redacted version is marked "REDACTED – FOR PUBLIC INSPECTION," with the confidential information redacted.

Should you have any questions please do not hesitate to contact me.

Respectfully submitted,



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Attachment 1

Request for Confidentiality

AMV Gateway, LLC ("AMV"), respectfully requests confidential treatment of certain information provided in its Request for Review of Decision of the Universal Service Administrator, WCB Docket Nos. 06-122, 96-45 and 97-21 ("Appeal") because this information is competitively sensitive, and its disclosure would have a negative competitive impact on AMV were it made publicly available. Such information would not ordinarily be made available to the public, and should be afforded confidential treatment under 47 C.F.R. §§ 0.457 and 0.459.

47 C.F.R. §0.457

Specific information in the Appeal is confidential and proprietary to AMV as "trade secrets and commercial or financial information" under Section 47 C.F.R. §0.457(d). Disclosure of such information to the public would risk revealing company-sensitive proprietary information in connection with AMV's ongoing business and operations.

47 C.F.R. §0.459

Specific information in the Appeal is also subject to protection under 47 C.F.R. §0.459, as demonstrated below.

Information for which confidential treatment is sought

AMV requests that specific information in the Appeal be treated on a confidential basis under Exemption 4 of the Freedom of Information Act. The information designated as confidential includes the sensitive USAC audit report (included as Exhibit 1), AMV's response to the draft USAC Internal Audit Division's Draft Detailed Audit Findings (included as Exhibit 2) and AMV's supplemental response to USAC Internal Audit Division's Draft Detailed Audit Findings (included as Exhibit 3) and information regarding AMV's customers, USAC contribution amount and the degree to which such amount would change based on USAC's recommendations is redacted. This information is competitively sensitive information that AMV maintains as confidential and is not normally made available to the public. Release of the information would have a substantial negative impact on AMV since it would provide competitors with commercially sensitive information. The non-redacted version of AMV's filing is marked as "**CONFIDENTIAL – NOT FOR PUBLIC INSPECTION.**" The redacted version of AMV's filing is marked as "**REDACTED – FOR PUBLIC INSPECTION.**"

Commission proceeding in which the information was submitted

The information is being submitted in AMV's Request for Review of Decision of the Universal Service Administrator, WCB Docket Nos. 06-122, 96-45 and 97-21.

Degree to which the information in question is commercial or financial, or contains a trade secret or is privileged

The information designated as confidential includes the sensitive USAC audit report, AMV's billing records and customer service orders and agreements and information regarding AMV's USF contribution amounts and the degree to which such amount would change based on USAC's findings. As noted above, the data is competitively sensitive information which is not normally released to the public as such release would have a substantial negative competitive impact on AMV.

Degree to which the information concerns a service that is subject to competition and manner in which disclosure of the information could result in substantial harm

The market for the television production and editing services that AMV provides is competitive and thus the release of this confidential and proprietary information would cause AMV competitive harm by allowing its competitors to become aware of sensitive proprietary information regarding the operation of AMV's business at a level of detail not currently available to the public.

Measures taken by AMV to prevent unauthorized disclosure; and availability of the information to the public and extent of any previous disclosures of the information to third parties

AMV has treated and continues to treat the non-public information disclosed in this Appeal as confidential and has protected it from public disclosure to parties outside of the company.

Justification of the period during which AMV asserts that the material should not be available for public disclosure

AMV cannot determine at this time any date on which this information should not be considered confidential.

Other information AMV believes may be useful in assessing whether its request for confidentiality should be granted

Under applicable Commission decisions, the information in question should be withheld from public disclosure.

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	Docket Nos. WC 06-122
AMV Gateway, LLC Request for)	WC 96-45
Review of a Decision of the)	WC 97-21
Universal Service Administrator)	

**REQUEST FOR REVIEW OF A DECISION OF THE
UNIVERSAL SERVICE ADMINISTRATOR**

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**REQUEST FOR REVIEW OF A DECISION OF THE
UNIVERSAL SERVICE ADMINISTRATOR**

I. INTRODUCTION AND SUMMARY

Pursuant to sections 54.719(c) and 54.720 of the Rules of the Federal Communications Commission (“FCC” or “Commission”), AMV Gateway, LLC (“AMV” or the “Company”) (Filer ID 823362) hereby respectfully requests review of the Final Audit Report (“USAC Audit Report”) issued by the Universal Service Administrative Company (“USAC”) on April 23, 2013.¹ The report stemmed from a compliance audit conducted by USAC’s Internal Audit Division (“IAD”) of AMV’s completion of the 2010 Telecommunications Reporting Worksheet, FCC Form 499-A, reporting revenues earned during the calendar year 2009.

Specifically, AMV appeals Finding #1 (“Finding #1”) concerning line reporting of revenues earned during calendar year 2009, a finding that turns on IAD’s conclusions about the legal classification of services provided by AMV. IAD erroneously identifies portions of AMV’s TV production and post-production service revenue as telecommunications revenue subject to Universal Service Fund contribution obligations. AMV, like its peers in the broadcast and video production industry, is an end user of telecommunications. The Company mistakenly

¹ See USAC Internal Audit Division Report on the Audit of AMV Gateway, LLC -2010 FCC Form 499-A Rules Compliance (USAC Audit No. CR2011CO011) adopted by the Board on April 23, 2013, attached hereto as Exhibit 1.

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began reporting and remitting to USAC as it expanded its video production services into a new physical plant, based on the practices of the predecessor owner of the facility, itself a telecommunications provider. Through this audit, IAD has built upon the Company's initial mistake in filing with more mistakes. IAD supports its conclusions about the legal classification of AMV's services by disregarding any evidence inconsistent with IAD's first blush conclusions while accepting *as fact* the way AMV identified itself on portions of the same Form 499 that the auditors concluded AMV misunderstood. The USAC Audit Report could have sweeping industry-wide impact if allowed to stand, and AMV urges the FCC to reverse the decision.

USAC's conclusions are unreasonable. First, IAD based its findings on AMV's reporting errors and arbitrary labels from its books of account. IAD chose to ignore all evidence inconsistent with its initial impressions formed in the early stages of the audit. Second, IAD's conclusions concerning legal classifications are faulty because IAD fails to distinguish between resale of telecommunications and passing along costs of doing business, which include telecommunications costs. The legal classification of services should turn on what AMV provides to its customers, not overhead and expenses AMV incurs in providing those services. Because of the nature of AMV's business and the nature of the programs it works on - televised live news coverage, sports events, live television shows - AMV needs to utilize satellite and fiber to send and receive its product. As a result, the telecommunications costs it incurs are significant. The nature of AMV's business does not offer it the luxury to deliver its finished product by mail, courier, email, or some other less expensive method. AMV's use of these expensive forms of telecommunications, however, and the fact that it makes these costs transparent to its customers, does not render AMV a telecommunications provider. AMV is an end user of telecommunications that never should have filed a Form 499. Instead, it has

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unwittingly made double payments into the Fund for years, both direct and indirect, when peers in the same industry properly have no direct contribution obligation. For the reasons discussed herein, AMV's services have always been exempt from USF contribution requirements. AMV requests that the FCC order USAC to accept AMV's withdrawal of its FCC Form 499-A filing and refund all overpayments made into the Universal Service Fund.

II. FACTUAL BACKGROUND

A. AMV's Service

The owners of AMV, the Duke family, have been engaged in editing and production work and support for live and recorded television shows, movies, live sports events and newsgathering for decades.² Today, AMV's customers are TV syndicators involved in producing programs; television networks including [REDACTED]; and film production companies.³ These customers hire AMV to provide editing and production work on their live and recorded television shows.⁴ AMV's employees are skilled video and audio engineers, graphics specialists, and video/audio editors.⁵ These employees provide quality control services for television video broadcasts and recorded programming before the TV show is delivered to the customer's desired location.⁶

In 1976, the Duke family entered the market as a production and editorial equipment rental business.⁷ By 1980, they expanded the video equipment rental business unto a video production and post production facility, and in 1989 they bought studios for larger productions⁸ In 2003, AMV expanded its operations by acquiring Williams Communications' "teleport"

² See Affidavit of Richard Duke attached hereto as Exhibit 4 ("Duke Aff.") at ¶ 2.

³ *Id.* at ¶ 49.

⁴ *Id.* at ¶ 50.

⁵ *Id.* at ¶ 47.

⁶ *Id.*

⁷ *Id.* at ¶ 3.

⁸ *Id.*

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facility in Carteret, New Jersey.⁹ AMV converted the newly acquired physical space into an adjunct video production and post-production facility to provide services to syndicators, television networks, film production companies, and similar customers that expanded AMV's in-house capabilities because AMV was able to quickly receive and deliver programs and materials for production.¹⁰ After purchasing the physical plant from Williams Communications, AMV installed equipment such as hundreds of television monitors, Dolby encoders and production systems that enabled it to edit programming, insert commercials, redact (*ie.*, "bleep out") indecent audio, record and replay a delayed version of programming information and other services¹¹ detailed herein and in AMV's submissions to IAD during the course of the audit, attached hereto and incorporated by reference.¹²

During the acquisition, management at Williams Communications incorrectly advised AMV that it would need to obtain a FCC Filer ID and contribute to the universal service fund in the same fashion as Williams Communications had.¹³ Williams Communications, a provider of telecommunications services, based this advice on its own practice and operations, not on the legal classification of AMV's services.¹⁴ AMV did not independently evaluate the proper legal classification of its video production and post-production services, or the accuracy of Williams

⁹ *Id.* at ¶ 4.

¹⁰ *Id.*

¹¹ *Id.* at ¶ 5.

¹² See Response of AMV Gateway, LLC to USAC Internal Audit Division Draft Detailed Audit Findings on the Audit of AMV Gateway's 2010 FCC Form 499-A dated June 20, 2012 attached hereto as Exhibit 2; Supplemental Response of AMV Gateway, LLC to USAC Internal Audit Division Draft Detailed Audit Findings on the Audit of AMV Gateway's 2010 FCC Form 499-A submitted October 16, 2012 attached hereto as Exhibit 3.

¹³ Duke Aff. at ¶ 6.

¹⁴ *Id.* at ¶ 7; The services provided by AMV are vastly different that what was offered by Williams Communications. Williams Communications provided pure transport and did not offer the production and editing services that AMV does. AMV and Williams Communications do not compete for the same customers as they are in different industries entirely. *Id.* at 8.

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Communications' statements.¹⁵ Instead, not understanding the true nature of its services, AMV took a conservative approach and began filing FCC Form 499s and incorrectly checked a block on the form to identify itself as a provider of satellite services, following the practice of the predecessor owner of the facility.¹⁶

All the while, AMV has been an end user of telecommunications services.¹⁷ AMV purchases telecommunications services from several suppliers in order to provide its TV production and post-production services.¹⁸ For example, it purchases separate single direction circuits (fiber loops) from Verizon so that AMV can establish a direct connection between a customer's location and AMV's facility.¹⁹ AMV's customers cannot use that fiber loop for any purpose other than to send video to AMV for production services and quality control or by using a second alternative path back again.²⁰ These fiber paths are single direction only and can not be used for two-way communications. Video can be sent either to AMV's facility for production work or from AMV's facility to the customer's site but, not both directions.²¹

In other words, AMV purchases the fiber for its own business purposes – establishing a connection between itself and its own customer – but AMV's customer cannot, in turn, specify the points of the fiber loop or what type of information is sent over that loop.²² The loop is in place solely to make possible AMV's editing, production and quality control services.²³ Even if the loop may only be used an hour or less a day in some cases, AMV incurs a monthly cost to establish and to maintain this connection between AMV and its customer so that it is on

¹⁵ Duke Aff. at ¶ 9.

¹⁶ *Id.* at ¶ 10.

¹⁷ *Id.* at ¶ 28.

¹⁸ *Id.* at ¶ 61.

¹⁹ *Id.* at ¶ 62.

²⁰ *Id.* at ¶¶ 63-64.

²¹ *Id.* at ¶ 65.

²² *Id.* at ¶ 66.

²³ *Id.* at ¶ 67.

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“standby” with a ready direct connection in the event the customer needs AMV to work on a program to be televised.²⁴

The cost associated with this fiber is considered an overhead expense that AMV recovers from its customer through its monthly fee.²⁵ Whereas AMV’s telecommunications supplier provides the fiber loop for AMV’s purposes, without regard to the type of information AMV chooses to send over the loop, AMV is not selling that same functionality to its own customer. AMV’s customer can only use that loop to send video to AMV so that AMV can provide post-production services and deliver the edited video back to the customer.²⁶

Although the various costs and components that AMV uses to provide its video production services may be itemized on customer bills, and revenues from these services are linked to AMV’s underlying costs in accounting books and records, AMV does not provide any of its customers the option of purchasing telecommunications services as a *standalone* product.²⁷ Thus, while AMV purchases separate telecommunications components from its suppliers, AMV’s customers do not use telecommunications components as standalone products separate and apart from AMV’s TV production and post-production services.²⁸ For example, customers do not purchase satellite service or fiber from AMV as a standalone product.²⁹ Instead, AMV’s customers hire AMV for the specific purpose of checking the quality of each and every video being transferred as well as changing the form and content of videos before broadcast.³⁰ When AMV’s customers need telecommunications services, such as satellite services for their own use,

²⁴ *Id.* at ¶¶ 68-69.

²⁵ *Id.* at ¶ 70.

²⁶ *Id.* at ¶¶ 71-72.

²⁷ *Id.* at ¶ 73.

²⁸ *Id.* at ¶ 74; see Affidavit of Lenny Laxer attached hereto as Exhibit 5 (“Laxer Aff.”) at ¶¶ 15-16.

²⁹ Duke Aff. at ¶¶ 75-78; Laxer Aff. at ¶¶ 15-16; see Letter June 19, 2013 from [REDACTED] attached here to as Exhibit 6 (“[REDACTED]”).

³⁰ Duke Aff. at ¶ 75; Laxer Aff. at ¶¶ 8-9; [REDACTED].

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they go directly to a satellite service provider to obtain the telecommunications services, not to AMV.³¹

B. USAC's Findings

In June 2011, the USAC's IAD commenced an audit of AMV's compliance in completing its 2010 Telecommunications Reporting Worksheet, FCC Form 499-A. IAD obtained supporting documentation and testimonial evidence for AMV's classification methods in an effort to ascertain whether AMV was compliant with 47 C.F.R. Part 54 as well as other FCC rules, FCC orders and the 2010 FCC Form 499-A Instructions (collectively the "Rules"). IAD concluded *inter alia*, that AMV improperly classified certain services as non-telecommunications revenue.³² As a result of the audit findings, the estimated effect on the contribution base is an increase in [REDACTED] for the audited period. Consequently, USAC concluded that AMV's additional USF contribution obligation is [REDACTED] for the period audited. IAD found that the documentary evidence was inconsistent with testimonial and physical evidence that *did* support AMV's description of services provided to its customers. The auditors disregarded most of the information provided throughout the audit period after the preliminary site visit.

Generally speaking, IAD made the following determinations when it concluded that AMV was providing telecommunications: that initial audit documentation provided in the form requested by IAD, including billing and accounting records, customer invoices, and spreadsheets completed in a format specified by IAD, contradicted testimonial and physical evidence obtained during and after the preliminary stages of the audit; that statements explaining that fiber circuits were used in conjunction with post-production and editing services were not supported by

³¹ Duke Aff. at ¶ 76; Laxer Aff. at ¶ 17.

³² See Audit Report, Finding #1.

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documentation and therefore would be accorded no weight; that supplemental documentation describing and detailing the alterations and changes to the form and content of video for AMV's top 11 customer during the relevant calendar year nonetheless supported IAD's initial impressions that AMV's line item charges for fiber, uplink and downlink services constitute resale of pure transmission, telecommunications, to AMV's customers.³³

III. ARGUMENT

On review, actions of the USAC Board are entitled to no deference from the Commission. Rather, the Commission reviews USAC Board decisions *de novo*. 47 C.F.R. § 54.723. The Commission must resolve requests for review of USAC decisions within 90 days. 47 C.F.R. §54.724.

The record confirms that the FCC should grant AMV's request and reject USAC's audit findings. The evidence demonstrates USAC wrongly and unlawfully classified AMV's TV production and editing services as telecommunications.³⁴ If left standing, USAC's Audit Report sets a dangerous precedent by classifying a provider to be a reseller simply because it uses telecommunications to provide its services and separates this operating cost in its books and records. USAC's decision turns on the labels used as shorthand on invoices and in accounting books and records. USAC's conclusions ignore the totality of evidence gathered to interpret and explain those records and arrive at an incorrect legal classification of the services AMV provided. The documentary, testimonial and physical evidence unequivocally show AMV's customers are provided non-telecommunications services. AMV's customers never received or perceived they were being provided telecommunications services.³⁵

³³ See generally USAC Audit Report at 10-17.

³⁴ See generally, Exhibits 2-7.

³⁵ *Id.*

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A. USAC's Findings Ignored Testimonial, Documentary and Physical Evidence that Ran Counter to the Auditors' First Impressions

The Commission's rules require USAC to audit carriers consistent with the Generally Accepted Government Auditing Standards ("GAGAS").³⁶ Under GAGAS, USAC must obtain evidence that is sufficient to provide a reasonable basis for the findings and conclusions reached in the audit.³⁷ Moreover, "in assessing the overall appropriateness of evidence, auditors should assess whether the evidence is relevant, valid and reliable. Sufficiency is a measure of the quantity of evidence used to support the findings and conclusions."³⁸ And, when assessing the evidence, "auditors should evaluate whether the evidence taken as a whole is sufficient and appropriate" for supporting the findings and conclusions.³⁹ "Evidence obtained through the auditors' direct physical examination, observation ... and inspection is generally more reliable than evidence obtained indirectly."⁴⁰

Documentary evidence is not necessarily to be accorded greater weight than other types of evidence in accordance with GAGAS. In describing the types of evidence that auditors can collect to form the basis for conclusions during field work, GAGAS provides:

[E]vidence may be categorized as physical, documentary, or testimonial. Physical evidence is obtained by auditors' direct inspection or observation of people, property, or events. Such evidence may be documented in summary memos, photographs, videos, drawing, charts, maps, or physical samples. Documentary evidence is obtained in the form of already existing information such as letters, contracts, accounting records, invoices, spreadsheets, database extracts, electronically stored information, and management information on performance. Testimonial evidence is obtained through inquiries, interviews, focus groups, public forums, or questionnaires. . . . The strength and weakness of each form of evidence depends on the facts and circumstances associated with the evidence and professional judgment in the context of audit objectives."⁴¹

³⁶ See 47 C.F.R. § 54.702.

³⁷ See GAGAS § 6.56, 2011 Internet Version.

³⁸ *Id.* at § 6.57.

³⁹ *Id.* at § 6.58.

⁴⁰ *Id.* at § 6.61(b).

⁴¹ GAGAS § A6.04.

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The auditors have chosen to accord greater weight to documentary evidence than all other forms of evidence collected during the audit based on the form alone. Testimonial or physical evidence that show the complete picture of the services provided by AMV is instead rejected as inconsistent with documentary evidence. Instead of reconciling and pulling together all information gathered, the auditors are “cherry picking” from among the documents, ignoring all testimonial and physical evidence that interprets and explains those documents, to arrive at a conclusion that supports a legal classification of “telecommunications.”

AMV provided sufficient documentary and testimonial evidence that proved it is not providing “telecommunications,” as defined in the Communications Act of 1934, as amended (the “Act”)⁴² to its own customers.⁴³ Instead, AMV is an *end user* of telecommunications services that uses telecommunications components to provide its service.⁴⁴

USAC had more than sufficient evidence to conclude that the production services offered by AMV were not telecommunications services.⁴⁵ In addition to the ample documentary evidence presented to USAC, AMV verbally explained its operations and its offerings. This testimonial evidence supports the interpretation of AMV’s documentary evidence. Testimonial evidence is considered useful in interpreting and corroborating documentary evidence.⁴⁶ Then, in a September 20, 2012 conference call, IAD asked for additional information about specific customers in order to get a more complete picture of the services provided to customers. To provide a more complete picture of the services AMV offers, AMV provided the auditors with a detailed explanation of the services provided to the 11 largest customers along with supporting documentation. These customers included [REDACTED],

⁴² See 47 U.S.C. § 153(50)


⁴³ See Exhibit 2-3 and generally Duke Aff ¶¶ 122-127.

⁴⁴ Duke Aff. at ¶28.

⁴⁵ See Exhibits 2-3.

⁴⁶ See GAGAS §6.62.

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, and others in the television industry.⁴⁷ This additional information was provided further supporting the conclusion that AMV is not a reseller of telecommunications.⁴⁸ With this additional information AMV invited IAD to visit its facility again to gain a better understanding of exactly what its TV production and editing services entail. IAD did not visit the facility. Had they visited AMV they would have seen more than 300 television monitors and AMV's video technicians performing their various production services.⁴⁹ They would have seen that AMV is constantly changing the form and content of its customer's video with encoding and other modifications in addition to monitoring and reviewing the video.⁵⁰ The services provided by AMV are the same services provided by any broadcast network: recording, playback, editing, duplication, encoding and transferring of the material between parties to further complete show material ultimately destined for public consumption.⁵¹ They would have seen the true functionality being provided to AMV's customers.

B. USAC Erroneously Relied on Arbitrary Labels When It Should Have Focused on the Services the Customer Received

The legal classification of service for USF reporting turns on what services an end user is actually provided and that end users' perceptions of the capabilities a provider offers, and not on labels that the provider places on its services.⁵² USAC abandoned this tenet when it seized on AMV's billing codes and invoice descriptions and ignored the service that AMV provided. As a result, by classifying AMV's services as telecommunications USAC exceeded its authority and has acted contrary to the will of Congress and the Commission.

⁴⁷ See Exhibit 2.

⁴⁸ See Exhibit 3.

⁴⁹ See Affidavit of Michael Carberry attached hereto as Exhibit 7 ("Carberry Aff.") at ¶¶ 9-12.

⁵⁰ See generally, Carberry Aff. at ¶¶ 9-20..

⁵¹ Duke Aff. at ¶ 20.

⁵² See, e.g. *Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities*, Declaratory Ruling and Notice of Proposed Rulemaking, 17 FCC Rcd 4798, para. 25 (2002).

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USAC's reclassification of AMV's revenue is based on labels describing underlying costs and inputs that AMV itself uses to provide television production and post-production services. To reclassify AMV's services as telecommunications ignores the critical fact that while AMV incurs costs in acquiring the telecommunications services it needs to provide services to its customers, AMV *does not provide* its own customers with telecommunications capabilities.⁵³

Again, USAC improperly seized on line-item identifications found on AMV's invoices. However, attributing weight to this "evidence" is completely misplaced. It does not matter how a provider labels, prices, or bills various components of its integrated service—these are marketing and accounting decisions that can be made in any number of ways and, critically, do not alter the nature of the service offered to consumers.⁵⁴ As the Commission has explained, "[f]or universal service contribution reporting purposes, the revenues should be reported based on the legal classification of the associated service."⁵⁵ Here, as in the CTE Telecom, LLC audit, the auditors requested specific types of billing records and accounting records and developed an initial understanding of the nature of the services from which revenues were derived from labels applied in those records. Here, as there, auditors disregarded inconsistent information obtained during the course of the audit that would provide a complete picture of the services from which the revenues in the account were derived.

In other words, it is insignificant how AMV bills for its services, what matters is what AMV provides to its customers. The determinative fact is that AMV *does not* provide telecommunications services. Therefore the fact certain underlying costs of providing video

⁵³ Duke Aff. at ¶¶ 79-86; Laxer Aff. at ¶¶ 15-17; [REDACTED]

⁵⁴ See *Request for Review of a Decision of the Universal Service Administrator by CTE Telecom, LLC*, Order, WC Docket No. 06-122, 27 FCC Rcd 15242 (2012) (finding that filer was not required to contribute to the universal service fund based on revenues where provider's label in its general ledger accounts did not accurately reflect the service from which the revenues in the account were derived.).

⁵⁵ *Id.* para. 14.

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production services are identified in AMV's billing is irrelevant to the legal classification of video production services as non-telecommunications.

Until the audit, AMV was unaware of the import of using industry terms of art such as "uplink," "downlink," "satellite services," "transmission" and others.⁵⁶ Because of this, AMV used terms of art to improperly describe its services.⁵⁷ What is termed "uplink" and "downlink" in the video production industry includes a range of services, not pure transmission.⁵⁸ AMV offers what it terms "uplink" services, but uplink, in the sense USAC referred to the term in the USAC Audit Report, may not even be used for the actual service AMV provides.⁵⁹ The term "uplink," as used by AMV, encompasses services involving post-production coding, editing, monitoring and quality control of television programming.⁶⁰ Using this term assists the technician in understanding the workflow direction (i.e., outbound) for the video information. With these services, a customer will send the video to AMV via the private fiber loop or by some other means, such as videotape or file delivery.⁶¹ When the video arrives at AMV's facility, AMV converts the video signal in order to process the video, view it, and add encoding and encryption to the video.⁶² AMV uses a Harris NetVX decoder and HD/SDI router for signal processing, which includes NAVE encoding (for Neilson ratings), closed captioning, some commercial insertion additions, video tape records (VTR) and disk records (DDR), Evergreen playback (discussed in more detail in footnote 72, and other encoding, depending on the particular customer's needs.⁶³ ATIS may be added to analog signals as part of what AMV terms

⁵⁶ Duke Aff. at ¶

⁵⁷ *Id.* at ¶¶ 21-22, 37.

⁵⁸ Duke Aff. at ¶¶ 99-109

⁵⁹ Duke Aff. at ¶ 87.

⁶⁰ *Id.* at ¶ 88.

⁶¹ *Id.* at ¶ 89.

⁶² *Id.* at ¶ 90.

⁶³ *Id.* at ¶ 91.

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“uplink” services.⁶⁴ Once processed, the video signal is converted from video to data with the HD/SDI encoder. The video travels an IP path to a satellite dish.⁶⁵ AMV might send a converted signal via satellite using the satellite services AMV has purchased for its own use, or the signal might travel via satellite services AMV’s customers have purchased directly from a satellite service provider for their own purposes.⁶⁶ The monthly subscription price of the “uplink” service is higher where AMV uses its own satellite services versus where the customer transmits the signal on its own satellite services.⁶⁷ In either case, AMV employees provide quality control as the video signal is sent via satellite, observing the program on monitors at the AMV facility so that AMV employees can contact the satellite service provider if they notice “sparkles” or other fade issues with the video quality.⁶⁸ All of these services appear as one line item called “uplink” on a customer invoice.⁶⁹

Similarly, AMV offers what it calls “downlink” services, which typically involve AMV capturing program information for quality control analysis and production services.⁷⁰ For example, a network might request pre-production services on a sports event to prepare video feeds for further editing at the customer’s studio.⁷¹ Network customers send the video to AMV via satellite services that the customer has purchased directly from a satellite service provider. When the signal comes to AMV’s facility, the signal is converted from satellite dish RF frequency to L-Band frequency via a decoder.⁷² The signal is converted to HD/SDI Video, not

⁶⁴ ATIS is a unique broadcast identification that allows broadcast networks to identify the location of the transmission point of a signal. *Id.* at ¶¶ 92-93.

⁶⁵ *Id.* at ¶ 94.

⁶⁶ *Id.* at ¶ 95.

⁶⁷ *Id.* at ¶ 96.

⁶⁸ *Id.* at ¶ 97.

⁶⁹ *Id.* at ¶ 98.

⁷⁰ *Id.* at ¶¶ 99-100.

⁷¹ *Id.* at ¶ 101.

⁷² *Id.* at ¶ 102.

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simply in order to complete the transmission from the customer to AMV, but in order to enable AMV to view the video on its monitors so that it can acknowledge receipt of the correct video and provide quality control assurance, confirm closed caption information is attached or added as required and other production and post-production services.⁷³ For example, the signal is processed internally within the facility through an HD/SDI video router to monitoring devices that can check for closed captioning decryption or loudness monitoring.⁷⁴ After AMV has provided quality control and production services, the video is converted to data and sent along an IP data path and then via a Verizon video circuit (loop) to the customer site.⁷⁵

In short, prior to the audit, AMV did not understand the legal classification of its services for universal service reporting purposes, the significance of using terms of art when describing its services in books of account.⁷⁶ Had it done so it would have concluded that it does not provide satellite transport or other telecommunications services, and its TV production and post-production services are not subject to USF obligations.

USAC itself acknowledged that AMV misunderstood the terminology and USF specifics when it filed its Form 499-A.⁷⁷ Despite this, USAC concluded that the terms AMV used in its invoices and when filing its Form 499-A proved that AMV was providing telecommunications. In doing so, USAC improperly ignored the fact that what AMV was providing to its customers was wholly inconsistent with the terms it misunderstood and used when describing its services and filing its Form 499-A. USAC's improper disregard of the evidence further exaggerates the error of USAC's findings.

⁷³ *Id.* at ¶ 103.

⁷⁴ *Id.* at ¶ 104.

⁷⁵ *Id.* at ¶ 105.

⁷⁶ *Id.* at ¶¶ 21-23, 37.

⁷⁷ *See* Exhibit 1 at 9, 10.

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C. AMV Does Not Provide Telecommunications to its Customers

The capabilities AMV offers to its customers do not fit the elements of the definition of “telecommunications” in the Communications Act of 1934, as amended (the “Act”).⁷⁸ “Telecommunications” is defined as:

the transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received.⁷⁹

First, AMV does not provide “transmission” for its customers. Basic telecommunications service was defined as “the offering of a pure transmission capability over a communications path that is virtually transparent in terms of its interaction with customer supplied information.”⁸⁰ AMV does not provide pure transmission. As detailed below, AMV’s customers engage AMV for the specific purpose of changing the form and content of videos before broadcast, such as changing the aspect ratio, adding graphics, adding coding for ratings services, etc.⁸¹ AMV uses telecommunications to obtain the video content for which AMV’s customer has requested AMV provide production services and to send the finished video content to its customer.⁸² The underlying telecommunications supplier provides the transmission to AMV for this purpose.⁸³

Second, AMV does not provide its customers with the capacity to transmit information “between or among points specified by” them.⁸⁴ When a customer contracts with AMV for production services, the customer and AMV each use telecommunications to deliver the video to and from AMV’s facility, *a point specified by AMV*, so that AMV can provide quality control, monitoring, encoding, adding commercials, loudness control and other services described above,

⁷⁸ Duke Aff. at ¶¶ 122-127.

⁷⁹ 47 U.S.C. § 153(50) (emphasis added).

⁸⁰ *Computer and Communications Industry Association v. FCC*, 693 F.2d 198, 204 (D.C. Cir. 1982).

⁸¹ *Id.* at ¶¶ 52-53.

⁸² *Id.* at ¶ 61.

⁸³ *Id.* at ¶¶ 65-67,

⁸⁴ *Id.* at ¶¶ 71-78; *see generally*, Laxer Aff. at ¶¶ 14-17.

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such as running an “Evergreen” program alongside a live show in the event something happens during production of the live show.⁸⁵ The customer is not purchasing telecommunications services from AMV that it can use in turn for its own purposes.⁸⁶ AMV’s services do not allow customers to transmit the delivered video to points of their own choosing.⁸⁷ Rather, all of AMV’s customers have their own third-party telecommunications suppliers to satisfy their telecommunications needs.⁸⁸

Finally, AMV always changes the form and content of the information as sent and received and therefore cannot offer telecommunications to its customers.⁸⁹ The FCC has determined that under the statutory definition of “telecommunications” “an entity provides telecommunications *only* when it *both* provides a transparent transmission path *and* it does not change the form or content of the information.”⁹⁰ There is always a change in form and content of the video, and AMV itself uses the transmission path to deliver the finished product to a desired location.⁹¹

AMV uses telecommunications to receive its customers’ video programming. AMV does not compete with or provide the same services as its underlying telecommunications suppliers, nor do its underlying suppliers provide the production, graphics and editing services that AMV

⁸⁵ These services are part of AMV’s redundancy services important in case of some catastrophic failure. For example, if a studio goes dark during a live show, AMV will substitute an “Evergreen” show in its place – a television show that does not have content tied to any particular time of year or day. This generic programming does have the current daily commercials inserted, or space for local commercials that a broadcaster could insert, with use of AMV’s facility and employees, so that commercials can still air during any time when a studio is dark. AMV provides this “playback to nowhere” service during live programming, so that the Evergreen show is running concurrently and would be available for broadcast immediately in case something happens with the live program or the studio. *See* Duke Aff. at ¶¶ 106-109.

⁸⁶ Duke Aff. at ¶¶ 63, 65-66; *generally* [REDACTED].

⁸⁷ Duke Aff. at ¶¶ 63-66, 72.

⁸⁸ Duke Aff. at ¶ 76; Laxer Aff. at ¶ 17.

⁸⁹ Duke Aff. at ¶ 52

⁹⁰ *In re Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, FCC 02-42A1, 17 FCC Rcd 3019, 3031 (2002)(emphasis added)

⁹¹ *See generally*, Duke Aff. at ¶¶ 52-60.

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offers its customers.⁹² Rather, AMV's competitors are such entities as television networks and post production facilities that choose to do the production and editing work in-house rather than out-source it to AMV.⁹³

The evidence shows that AMV's customers do not purchase or use stand alone telecommunications components from AMV and they have never believed that AMV was providing such services.⁹⁴ Indeed, there is no need to purchase such services from AMV because all of AMV's customers have their own arrangements with telecommunications providers.⁹⁵ AMV's customers have always understood that AMV utilizes telecommunications that it purchases from telecommunications providers in order to offer production and post-production services but, these costs of AMV's video production business are not components separately offered to AMV's customers.⁹⁶ The capabilities AMV offers to its customers do not fit the elements of the definition of "telecommunications" in the Communications Act of 1934, as amended (the "Act").⁹⁷

In short, AMV uses telecommunications to obtain the video content for which AMV's customers have requested production services and to send the finished video content to its customers.⁹⁸ The underlying telecommunications supplier, e.g., Verizon, provides the transmission to AMV for this purpose.⁹⁹ AMV never provides its customers with the capacity to transmit information "between or among points specified by" them.¹⁰⁰ Consequently, the

⁹² *Id.* at ¶¶ 116-118.

⁹³ *Id.* at ¶ 119.

⁹⁴ *See* [REDACTED] Laxer Aff. at ¶ 16.

⁹⁵ Duke Aff. at ¶ 127; Laxer Aff. at ¶ 17.

⁹⁶ *See generally*, Laxer Aff. at ¶¶ 9-12, 15-16; *see National Cable & Telecommunications Association v. Brand X Internet Services*, 545 U.S. 967, 990 (2005).

⁹⁷ *See generally* Exhibit 2-3; Duke Aff. at ¶¶ 122-127; *see e.g.* [REDACTED]

⁹⁸ *See generally*, Duke Aff. at ¶¶ 61-72.

⁹⁹ *Id.* at ¶¶ 62, 66.

¹⁰⁰ *Id.* at ¶¶ 63, 65-67, 71-72.

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customer is not purchasing telecommunications services from AMV that it can use in turn for its own purposes.¹⁰¹ If AMV was able to send and receive video via email, for example, the question whether AMV was an Internet service provider would seem ridiculous. In that instance, AMV would be a user of Internet services even though the costs to AMV of having Internet access would be passed on in some form to AMV's customers.

AMV does far more than pass on a video signal from one place to another. AMV monitors the quality of video, adds encoding¹⁰² and otherwise alters the transmitted information depending on a particular customer's specifications.¹⁰³ AMV employees also always monitor the quality of video signals and edit the content to suit the customer's needs.¹⁰⁴ Thus, before the video is sent to the customer's destination,¹⁰⁵ AMV processes the information received, monitors video signals, and converts formats and other information contained in the video.¹⁰⁶

Depending on the type of signal involved, AMV might also make other conversions, such as aspect ratio, format, or standards conversions.¹⁰⁷ Television signals can have different sizing and format requirements in order for the video to appear correctly on a television screen.¹⁰⁸ Because the television signals must first be converted from video to data and/or IP to be carried over satellite or digital media, none of these parameters are in place when AMV receives the

¹⁰¹ *Id.* at ¶¶ 66, 71-72.

¹⁰² Encoding is the process of compressing a signal with as little loss in signal quality as possible. Chroma subsampling is the practice of encoding images by implementing less resolution for chroma information than for luma information, taking advantage of the human visual system's lower acuity for color differences than for luminance. In the documents attached to Exhibit 3, for example, "4:2:2" and "4:2:0" describe the chroma subsampling requested by the customer.

¹⁰³ Such changes in form and content include by way of example, adding graphics, adding coding for rating services, adding close captioning, adding commercials, etc.

¹⁰⁴ Carberry Aff. at ¶¶ 9, 20.

¹⁰⁵ AMV does not broadcast programming to the general public. AMV provides production and post-production services with the program information supplied to it by its own Customers. AMV returns the finished product to its Customers who ultimately broadcast the material to the public.

¹⁰⁶ Carberry Aff. at ¶¶ 9-20; Duke Aff. at 19, 53.

¹⁰⁷ Duke Aff. at ¶ 54.

¹⁰⁸ *Id.* at ¶ 55.

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television signal.¹⁰⁹ Consequently, converting signals is a necessity if the format arriving at AMV is not the required specification of the receiving customer.¹¹⁰ For example, SD is most commonly sent in a 4:3 ratio of width to height, and HD is 16:9.¹¹¹ Some broadcasters will prefer signals to be sent in SD as a 16:9 format to create a black space above and below the picture.¹¹² Many older programs that were originally shot in SD 4:3 ratio are being broadcast on HD networks and will have black on the sides of the picture.¹¹³ AMV can convert the aspect ratio or replace the black space with a graphic element instead.¹¹⁴ Because conversions cause degradation in the show quality, all efforts are made to reduce the number of times a signal is converted.¹¹⁵ The signal originator will usually not sacrifice any quality degradation to the product, so AMV normally performs the conversion one time to the standard required by the recipient.¹¹⁶

Clearly, AMV's TV production and post-production service incorporates an array of services where AMV is changing the form and content of the video sent to its customers. As a result, it is not providing "telecommunications."

D. AMV Is an End-User of Telecommunications, Not a Reseller

USAC erroneously found that AMV is a reseller of telecommunications. FCC Form 499-

A Instructions provide that:

For the purpose of completing Block 3, a "reseller" is a telecommunications carrier or telecommunications provider that: 1) incorporates purchased telecommunications services into its own telecommunications offerings; and 2) can reasonably be expected to

¹⁰⁹ *Id.*

¹¹⁰ *Id.* at ¶ 56.

¹¹¹ *Id.* at ¶ 57.

¹¹² *Id.*

¹¹³ *Id.* at ¶ 58.

¹¹⁴ *Id.*

¹¹⁵ *Id.* at ¶ 59.

¹¹⁶ *Id.*

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contribute to federal universal support mechanisms based on revenues from such offerings when provided to end users”.¹¹⁷

AMV does not incorporate purchased telecommunications into its own *telecommunications* offerings.¹¹⁸ Rather, AMV is itself an *end user* of telecommunications.¹¹⁹ AMV uses telecommunications obtained from suppliers for the purpose of establishing a connection directly to particular customers that require often real-time customized video processing for their signals. Consequently, AMV does not *resell* to its customers the same functionality or capacity that it purchases from its suppliers. AMV pays USF surcharges as an end user to its telecommunications suppliers, such as Verizon, which as a telecommunications provider has the direct USF contribution obligation. Despite its efforts AMV misunderstood the USF regime and a provider’s contribution obligations.¹²⁰ These misunderstandings are evidenced by the fact that AMV reflected another cost of AMV’s business in the form of pass-through universal service charges on customers’ invoices.¹²¹ Because AMV’s suppliers pass through universal service charges to AMV, AMV included this cost on invoices to AMV’s own customers.¹²² As a result, USAC has collected *double* contributions from AMV. That is, AMV, due to its own misunderstanding of the mechanics of the Fund, has unwittingly been paying twice – once in the form of pass-throughs to its telecommunications suppliers in the form of USF surcharges those carriers impose *and* secondly in the form of USF fees it collects from its customers and remits to USAC based on a mistaken belief that USF assessments are based on

¹¹⁷ See 2010 FCC Form 499-A Instructions at 19.

¹¹⁸ See generally Duke Aff. at ¶¶ 73-78

¹¹⁹ See generally *id.*, at ¶¶ 61-72.

¹²⁰ *Id.* at ¶ 22.

¹²¹ *Id.* at ¶ 23.

¹²² *Id.* at ¶¶ 26-27.

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what AMV purchases and utilizes to provide those services.¹²³ AMV did not realize that as an end user of telecommunications it did not have a direct contribution obligation of its own.¹²⁴

AMV's revenues are derived from the sale of non-telecommunications video production and editing services.¹²⁵ Despite the mound of evidence supporting AMV's position that it is an end-user of telecommunications, USAC unbelievably found AMV to be a reseller. This finding was erroneously based, in large part, on itemizations presented on AMV invoices. USAC's conclusions ignore reality and disregard evidence that explains why AMV provides the line-item details on its customers' invoice.¹²⁶

Purely for the customer's convenience and information, AMV's invoices reflect, in some instances, AMV's own underlying costs and inputs.¹²⁷ Consider for example an attorney that bills \$250.00 per hour for her services. In providing her legal services she uses the telephone to obtain information from the client and deliver her advice. She may separately invoice the client for the telephone usage or roll it into the overhead/cost of doing business that is incorporated into her hourly rate. Either way, she is not considered a reseller of telecommunications. Likewise, AMV is not a reseller of telecommunications nor does it offer specific separate services that comprise a bundle. The various telecommunications services that AMV must acquire to provide its production and post-production editing services are transparent to its customer – meaning they are itemized on the customers' bills.¹²⁸ However, these components are not resold to

¹²³ Duke Aff. at ¶¶ 27-28.

¹²⁴ Duke Aff. at ¶¶ 21-28.

¹²⁵ AMV now understands that because it should not be a direct contributor to the Fund, the FCC “will look to the underlying carrier,” in other words, AMV's own suppliers, “for the universal service contribution.” *In the Matter of Federal-State Joint Board on Universal Service Request for Review of Decision of the Universal Service Administrator by Global Crossing Bandwidth, Inc.*, CC Docket No. 96-45, Order, 24 FCC Rcd 10824, 10828 (2009).

¹²⁶ Duke Aff. at ¶¶ 79-80, 110-114.

¹²⁷ Duke Aff. at ¶ 80.

¹²⁸ Duke Aff. at ¶¶ 79-81.

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AMV's customers, either individually or as a bundle.¹²⁹ Moreover, these line items *do not* reflect the functionality that is being supplied to AMV's customers, nor could a customer purchase any of these line items directly from AMV on a standalone basis for any purpose.¹³⁰ The reality is that these line-item charges are akin to the overhead that AMV rolls into its charges.¹³¹

The details provided by AMV were solely to assist in explaining to AMV's customers the basis for the pricing of AMV's production and editing services.¹³² There can be no denying that a significant part of AMV's operating expenses derive from the telecommunication services that it purchases. These telecommunications components are necessary for AMV to deliver the production and post-production editing services it provides on a timely basis.¹³³ In fact, without these telecommunications components AMV could not adequately provide its services. Because these costs (*ie.* satellite transport) are so expensive, AMV decided to identify these costs AMV paid in its customer invoices. It did this in large part to provide transparency to its customers and respond to questions about why its television production and post-production prices were what they were.¹³⁴

USAC confuses these operating expenses with *resale* and somehow leaps to the conclusion that because AMV uses telecommunications in its operations it is somehow reselling telecommunications. The Bureau should reject USAC's conclusions and grant AMV's Request for Review. The fact that the cost of AMV's production and post-production services includes

¹²⁹ Duke Aff. at ¶ 82; Laxer Aff. at ¶ 15.

¹³⁰ Duke Aff. at ¶ 83; Laxer Aff. at ¶¶ 9, 16.

¹³¹ Duke Aff. at ¶ 80.

¹³² Duke Aff. at ¶¶ 110-111.

¹³³ Duke Aff. at ¶¶ 79-80, 110-114.

¹³⁴ Duke Aff. at ¶ 113.

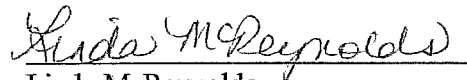
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the telecommunications charges that AMV incurs through its operations does not equate to AMV reselling telecommunications.

IV. CONCLUSION

In light of the foregoing, AMV respectfully requests that the Commission reverse Finding #1 of the USAC Audit Report regarding the classification of AMV's video production services. Further, AMV requests that the Commission find that AMV is an end user of telecommunications services with no direct USF contribution obligation and order USAC to refund excess contributions into the Fund.

Respectfully submitted,



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Dated: June 21, 2013


VERIFICATION

State of New York

County of NY

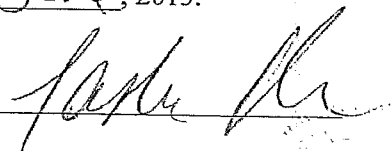
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I, Richard Duke, President of AMV Gateway, LLC ("AMV"), am authorized to and do make this Verification on AMV's behalf. The statements and facts in the foregoing Request for Review of a Decision of the Universal Service Administrator are true and correct to the best of my knowledge, information and belief.



Richard Duke, President
AMV Gateway, LLC

Subscribed and sworn before me this 10 day of June, 2013.



Notary Public

My Commission expires: 2/14/2017

TASHA RIVERA
Notary Public, State of New York
Registration #01R16122616
Qualified In Bronx County
Commission Expires February 14, 2017